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On a Problem of the Lex Aquilia

DIG. ix 2, 52, 2. Alfenus. In clivo Capitolino duo plaustra onusta mulae ducebant; prioris plaustrī muliones conversum plaustrum sublevabant, quo facile mulae ducerent; interea superius plaustrum cessim ire coepit, et cum muliones, qui inter duo plaustra fuerunt, e medio exissent, posterius plaustrum a priore percussum retro redierat, et puerum cuiusdam obtriverat. Dominus pueri consulebat, cum quo se agere oporteret? Respondi: in causa ius esse positum; nam si muliones, qui superius plaustrum sustinuissent, sua sponte se subduxissent, et ideo factum esset, ut mulae plaustrum retinere non possint, atque onere ipso retrahentur, cum domino mularum nullam esse actionem, cum hominibus, qui conversum plaustrum sustinuissent, lege Aquilia agi posse. Nam nihilominus eum damnum dare, qui quod sustineret dimitteret sua voluntate, ut id aliquem feriret, veluti si quis asellum, cum agitasset, non retinisset; aequē si quis ex manu telum aut aliud quid immisisset, damnum iniuria daret. Sed si mulae, quia aliquid reformidassent, et muliones, timore permoti ne opprimerentur, plaustrum reliquissent, cum hominibus actionem nullam esse, cum domino mularum esse. Quodsi neque mulae, neque homines in causa essent, sed mulae retinere onus nequissent, aut cum conniterentur, lapsae concidissent, et ideo plaustrum cessim redisset, atque hi quod conversum fuisset onus sustinere nequissent, neque cum domino mularum, neque cum hominibus esse actionem. Illud quidem certum, quoquo modo res se haberet, cum domino posteriorum mularum agi non posse, quoniam non sua sponte, sed percussae retro redissent.

This passage has been frequently misunderstood both by civilians and latinists; for instance by Grueber, *Lex Aquilia* 171, Pernice, *Lehre von Sachbeschädigungen* 214, Munro, *Lex Aquilia*, the French translators of the Digest, and Friedländer, *Sittengeschichte Roms* i 72 in various ways, for they do not all agree. The point of law is not obscure, but the Latinity. There are undoubtedly several ambiguities in the account; the most perplexing is the meaning of *conversum*. Plainly the drivers of the upper wagon were helping out the mules, but it is not plain to which wagon these mules belonged. The upper wagon began to go back and the drivers were between the two wagons. Presumably, they were pushing behind the first or upper wagon. In spite of their

efforts the upper wagon gradually slipped down the hill towards the second wagon, and finally the first wagon struck the second one; but nothing is said about the mules of the second. It must be, then, that the second wagon was struck with a slanting blow, and that, consequently, the first wagon must have swerved from its course directly up the hill; and this must be the meaning of *conversum*; the first wagon was turned about at an angle to its proper course, and as the carts had only two wheels, this change in direction could easily have been brought about on a steep grade. Very likely the load on the wagon had slipped back and thus made a powerful leverage against the efforts of the mules. The *plaustrum* was merely a platform supported by two wheels, and had no sides. When the collision seemed imminent, the drivers behind the upper wagon jumped aside to save themselves. The second wagon was struck and in consequence also started down hill and crushed a slave boy who was behind it. The drivers of the second team were apparently attending to their own proper business, but were unable to stop their own cart from going backward and their own mules with it.

The decision of Alfenus was that the owners of the mules were blameless if the drivers of the first cart voluntarily withdrew, and if the men acted on the necessity of self preservation they also are not to be held responsible; if the mules had been frightened and a loss had actually been caused, the owners would have been held responsible. If the accident was due merely to the heavy load and occurred in spite of all precautions, no one was to blame. In any case the second wagon has no responsibility.

The word *converto* means a "turning about" either to a slight degree or to a full reversal, depending on the context. In the *Bellum Africanum* 63, 3, *conversis navibus . . . fugere contendit*, the ships turned tail and fled; in the *Aeneid* v 582 *rorsusque vocati convertere vias*, they wheeled about: in *Sen. Thy.* 784 *verterit currus licet*, should the sun reverse his car. The first wagon was not upset nor tilted nor does *conversum* refer to a shifting of the load to the rear of the wagon nor does it mean the rear of the wagon itself. So far as I know there is no parallel in all Latinity to *conversum plaustrum* for which (and other reasons) some would change the text. *Prioris plaustri*, *superius plaustrum*, *conversum plaustrum* all refer to the upper wagon.

W. A. Merrill.